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FIRST GENERAL COUNSEL'S REPORT

CELA

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DATE COMPLAINT FILED: July 10, 2012

DATE OF NOTIFICATION: October 18, 2012

LAST RESPONSE RECEIVED: November 7, 2012

DATE ACTIVATED: November 19, 2012

EXPIRATION OF SOL:

12/16/2016 (earliest)

6/13/2017 (latest)

SOURCES:

Sua Sponte Submission and Complaint
filed by Misha Fredericks

RESPONDENTS:

Joel C. Tyner
Joel for Congress and Joel C. Tyner in his official
capacity as treasurer
Misha Fredericks

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(2)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 433(a), (c)
2 U.S.C. § 434(a), (b)
2 U.S.C. § 439(a)
11 C.F.R. § 101.1(a)
11 C.F.R. § 102.2(a)
11 C.F.R. § 102.7(a), (b)
11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

This matter was generated following a *sua sponte* submission and complaint filed by Misha Fredericks, the former treasurer of Joel for Congress (the "Committee"), which is the authorized committee of 2012 congressional candidate Joel C. Tyner. The submissions allege that the Committee misreported its cash-on-hand, omitted certain receipts and disbursements from its reports (which also show that Tyner reached candidate status earlier than he reported), and failed to appoint a new treasurer after Fredericks resigned. Fredericks alleges that Tyner failed to provide receipts supporting his purported campaign expenses and surmises that he may have converted campaign funds to personal use.

The record evidence shows that the Committee filed a late Statement of Organization; failed to file a disclosure report with the Commission; disclosed inaccurate cash-on-hand balances; failed to accurately report certain receipts and disbursements; failed to properly track cash disbursements in accordance with the Federal Election Campaign Act of 1972, as amended, (the "Act"); and that Tyner filed his Statement of Candidacy late. We therefore recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. §§ 432(h), 433(a) and 434(a) and (b), and that Tyner violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a). We also recommend that the Commission authorize pre-probable cause conciliation with the respondents to resolve these violations. As discussed further below, we further recommend that the Commission dismiss the allegation that the Committee violated 2 U.S.C. § 433(c) and that the Commission decline to open a MUR as to former treasurer Fredericks in her personal capacity for reporting failures. Finally, we do not believe there is sufficient evidence to conclude that Tyner converted campaign funds to personal use, and therefore we recommend that the Commission find no reason to believe that Tyner violated 2 U.S.C. § 439(a).

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II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

Tyner filed with the Commission his Statement of Candidacy for New York's 20th Congressional District on January 18, 2012, and his campaign's Statement of Organization on January 30, 2012.¹ Tyner lost the primary election on June 26, 2012. He is currently serving his fifth term as a Legislator for Dutchess County, New York, representing the towns of Rhinebeck and Clinton.²

Fredericks served as treasurer for the Committee from April 23, 2012 until she resigned on June 18, 2012.³ In the *sua sponte* submission, which included copies of the Committee's bank statements from August 2011 through May 2012, and the complaint, Fredericks alerts the Commission to numerous discrepancies between the Committee's disclosure reports and the bank statements.⁴ The statements reflect that the Committee account was opened on August 4, 2011, with a deposit of \$5 using the account name of "Joel for Congress," and show numerous deposits and cash withdrawals until the May 2012 statement, when the Committee also began to make payments by check and debit card to vendors such as Staples, Verizon Wireless, and

¹ After New York's congressional district lines changed, Tyner amended the Statements of Organization and Candidacy on April 16, 2012, to list the 19th Congressional District as the House district he sought to represent.

² See *Your County Legislators*, DUTCHESS COUNTY GOVERNMENT WEBSITE, http://www.co.dutchess.ny.us/CountyGov/Departments/Legislature/CLlegislators_1332.htm; *Meet Joel Tyner*, JOEL FOR CONGRESS WEBSITE, <http://joelforcongress.org/bio>; Resp. at 1 (July 6, 2012).

³ See Joel for Congress, Form 99 (June 18, 2012) ("I, Misha Fredericks, effective immediately this 18th day of June 2012 at 2:23 PM EST resign as Treasurer of Joel Carlton Tyner (Campaign name Joel for Congress."); see also Joel for Congress, Form 99 (June 19, 2012) (submitted by Misha Fredericks and providing detailed explanation for resignation, stating that she resigned "because it was impossible for [her] to fulfill [her] responsibilities as treasurer"). According to Fredericks, Tyner's mother, Judy Tyner Malstrom, served as the Committee treasurer prior to Fredericks, but did not file any disclosure reports. See Joel for Congress, Statement of Organization (Jan. 30, 2012).

⁴ *Sua Sponte* Submission at 1 and Attach. (June 25, 2012).

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1 various gas stations. It appears that prior to May 2012, all of the Committee's expenses were
2 paid with cash. A comparison of these bank statements with the Committee's reports shows that
3 the Committee failed to disclose approximately \$5,388.61 in receipts and \$5,233 in
4 disbursements from the time that Tyner launched his campaign in August 2011 through
5 December 31, 2011. Further the bank statement balances do not reconcile with the cash-on-hand
6 reported to the Commission. For instance, the Committee's 2012 April Quarterly Report,
7 disclosing the Committee's activity from January 1, 2012 through March 31, 2012, reported a
8 cash-on-hand balance of \$5,864.04 even though the Committee's bank account only had a
9 balance of 41 cents on March 31, 2012.⁵ The Committee's 12-Day Pre-Primary Report covering
10 the period from April 1 through June 6, 2012 disclosed a cash-on-hand balance of \$8,499.78
11 even though the bank account on June 6 reflected a balance of \$3,290.97.⁶

12 Fredericks also alleges that Tyner may have converted funds to personal use. She
13 describes Tyner's practice of making cash withdrawals from the Committee bank account,
14 purportedly for Committee expenses. According to Fredericks, after withdrawing the cash, Tyner
15 did not produce receipts for his cash payments of campaign expenses. She said that Tyner
16 instructed her to report disbursements for gas and telephone expenses of \$200 a month for the
17 months of January through April 2012 but that these amounts were estimates not supported by
18 receipts. She states that she demanded Tyner provide receipts for his expenses from April 2012
19 forward, but Tyner continued to withdraw cash from the Committee bank account on a daily

⁵ *Id.* at 1. The Committee's amended April Quarterly Report filed with the Commission on May 21, 2012 disclosed an ending cash-on-hand balance of \$6,271.80.

⁶ *Sua Sponte* at 1 and Attach.

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1 basis without documenting his use of those funds.⁷ Fredericks suggests that based on his
2 numerous cash withdrawals and lack of receipts, Tyner may have violated the personal use
3 provisions of the Act.⁸

4 On a Form 99 that she filed with the Commission on June 19, 2012, and in a discussion
5 with the Office of General Counsel ("OGC") on December 11, 2012, Fredericks provided
6 additional information concerning the Committee's reports and described her efforts to properly
7 disclose the Committee's financial transactions. She states that she had "deep reservations"
8 about staying on as treasurer once she realized that reconciling the bank accounts with the
9 Committee's disclosure reports would be almost impossible.⁹ She claims that she routinely
10 reminded Tyner to provide receipts in order to properly account for the Committee's
11 expenditures and had the bank issue Tyner a debit card so that the bank would have a record of
12 where the card was used.¹⁰ Fredericks explains that prior to her joining the campaign, Tyner
13 used cash for virtually all of the campaign's expenses, including gas, telephone expenses (*i.e.*,
14 minutes for a pay-as-you-go phone), and almost daily printing and copying expenses for flyers.
15 She tried to find different ways to ensure that Tyner provided her with accurate information
16 concerning the campaign expenses, including through the use of a debit card, a stamp, and a

⁷ *Id.*; Fredericks Submission (Dec. 11, 2012) (attaching online bank statement current as of June 18, 2012).

⁸ *Sua Sponte* Submission at 1 and Attach. In a discussion with our Office following up on her *sua sponte* submission, Fredericks stated that Tyner purchased books for \$30-\$40 that she believed were for personal use, but she did not provide any additional details or an explanation regarding why she believed the books were personal use expenses.

⁹ Joel for Congress, Form 99 (June 19, 2012).

¹⁰ *Id.* Fredericks also set up an "EZ Pass" toll payment account and a cell phone account with Verizon Wireless to aid in tracking the campaign's expenses. *Id.* See also Fredericks Submission (Dec. 11, 2012) (including e-mails, dated May 13, 14, 20, 25 and June 5, 8, 9, 2012, requesting receipts for Tyner's expenses).

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1 receipt booklet.¹¹ According to Fredericks, although Tyner began using the campaign's debit
2 card in May 2012, he continued to make frequent cash withdrawals from the Committee account
3 and reimburse some volunteers' expenses using cash.¹²

4 Similarly, Fredericks asserts that she did not receive accurate information to report the
5 Committee's receipts. She points to instances (specifically, fundraisers held on May 26 and
6 June 7, 2012) when Tyner may have received cash contributions but which were never given to
7 her for deposit or inclusion on the Committee's disclosure reports.¹³ Further, in the course of
8 correcting the Committee's disclosure reports, Fredericks discovered that the Committee
9 maintained a PayPal account for the collection of contributions, which had collected
10 contributions on behalf of the Committee as early as August 2011. These contributions,
11 however, had not yet been deposited into the Committee's account.¹⁴

12 Finally, Fredericks also alerts the Commission that despite her resignation as treasurer,
13 Tyner has failed to appoint a new treasurer and that the Committee made disbursements and
14 accepted contributions without a treasurer in place, in violation of Commission regulations.¹⁵

¹¹ See, e.g., Fredericks Submission (Dec. 11, 2012) (including e-mail dated June 7, 2012, suggesting use of a receipt booklet and a stamp to help Tyner track his receipts and expenses).

¹² *Id.* (including e-mail dated June 7, 2012, from Tyner explaining that he gave certain campaign volunteers cash to cover their "travel/flyer/music costs," but acknowledging that "it wouldn't be a bad idea [to ask for] . . . receipt[s] on letterhead for these musical benefits").

¹³ Joel for Congress, Form 99 (June 19, 2012).

¹⁴ See *Sua Sponte* Submission at Attach. (showing first transfer from PayPal to Committee bank account being made on May 18, 2012, in the amount of \$2,103.78). Additional documentation provided by Fredericks show that the Committee received \$155 in contributions through PayPal from August through December 2011. Fredericks Submission (Dec. 11, 2012) (attaching printout of PayPal activity). According to Fredericks, the Committee also maintained an ActBlue account and Tyner received the ActBlue checks directly at his residence. See also Fredericks Submission (Dec. 11, 2012) (including e-mail dated June 9, 2012 from Fredericks requesting copies of the ActBlue checks from Tyner). Fredericks did not provide any information regarding when or whether the contributions received through ActBlue were deposited into the Committee's bank account.

¹⁵ Compl. at 1.

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On June 20, 2012, the Reports Analysis Division ("RAD") sent Tyner a Request for Additional Information indicating that the Committee's treasurer had resigned and reminding him that the Committee was required to name a new treasurer within ten days of her resignation. As of the date of this report, the Committee has not formally named a new treasurer by filing an amended Statement of Organization. RAD's communication logs, however, reflect that Tyner informed RAD on July 2, 2012, that he would be serving as the Committee's new treasurer and he signed the Committee's most recent reports, filed in July and November 2012, as treasurer.

Tyner denies that he used his campaign to "benefit [himself] financially," and states that "Fredericks, without my knowledge, vastly underreported how much I spent on gasoline, phone calls, and campaign literature expenses from last August until now."¹⁶ Tyner explains that he traveled long distances by car because he "was campaigning heavily across the old 20th Congressional District" during the summer of 2011 and then the 19th Congressional District after the district lines were redrawn in March 2012.¹⁷ His response references press articles reporting a number of campaign events he attended, including pre-Labor Day press conferences in Lake Placid and other towns during the week of August 29, 2011,¹⁸ a speaking event in September

¹⁶ See Resp. at 1 (dated July 6, 2012); Fredericks Submission (Dec. 11, 2012) (including e-mail from Tyner, dated May 24, 2012, suggesting that \$3,000 unaccounted for from August 2011 through April 2012 "can just simply be ascribed to Tracfone minutes," that he was spending "\$50 every several days on Tracfone minutes," and was spending more than \$200 a month on gas each month driving around the congressional district). See also Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

¹⁷ Resp. at 1-2 (dated Jul. 6, 2012).

¹⁸ Resp. at 1-2 (dated July 6, 2012) (citing news article discussing his candidacy); see Nathan Brown, *Dutchess County Legislator to challenge Gibson*, ADIRONDACK DAILY ENTERPRISE (Sept. 6, 2011), <http://www.adirondackdailyenterprise.com/page/content/detail/id/526425/Dutchess-County-legislator-to-challenge-Gibson.html>. An earlier article from the same publication states that Tyner formally announced his candidacy at events in Hyde Park and Hudson, NY on August 12, 2011. See Patricia Doxsey, *Dutchess Legislator challenges Gibson*, ADIRONDACK DAILY ENTERPRISE (Aug. 13, 2011), <http://www.adirondackdailyenterprise.com/page/content/detail/id/526046/Dutchess-legislator-challenges-Gibson.html>.

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1 2011 held three hours from his home (which he states demonstrates that he was serious about his
2 campaign),¹⁹ and states that he hosted numerous film screenings throughout the district for
3 several months in 2011.²⁰ He also states that he "spent an incredible amount of money on flyers"
4 and printing costs, mostly at Staples, and that he was "perpetually running around with a stack of
5 flyers under [his] arms."²¹ Tyner argues that Fredericks's allegations were politically motivated
6 and states that she intentionally "mixed up receipts from [Tyner] and others right in front of
7 [him]."²² He asserts that Fredericks "failed to accurately or completely report campaign
8 expenditures."²³ He also states that, after the "termination of Misha Fredericks," another
9 treasurer was appointed, Andi Weiss-Bartczak, but she also was "terminated" several weeks
10 later.²⁴ Tyner states that the campaign notified the Commission of Weiss-Bartczak's
11 appointment and is "unclear . . . why the Commission has no information" about Weiss-
12 Bartczak.²⁵

13 In a supplemental response, Tyner addresses the possible late filing of his Statement of
14 Candidacy and Statement of Organization that was raised in the notification letter. He states that
15 he called the Commission during the Fall and Winter of 2011 asking about filing as a candidate

¹⁹ Tyner's response cites to the following news article regarding that event: Jim Austin, *Local biological director to receive award*, THE DAILY STAR (Sept. 16, 2011), <http://thedailystar.com/localnews/x1492496002/Local-biological-director-to-receive-award>.

²⁰ Resp. at 1-2 (dated July 6, 2012).

²¹ *Id.* at 2.

²² *Id.* at 2-3; Resp. (dated Oct. 30, 2012).

²³ Resp. (dated Oct. 30, 2012).

²⁴ *Id.*

²⁵ *Id.*

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1 and was told to wait until he raised \$5,000.²⁶ Tyner states that "at just about Jan. 1st [2012], I
2 did reach that \$5000 mark," that he also spent \$5,000 by January 2012, and was told to file a
3 report for the first three months of 2012.²⁷

4 **B. Legal Analysis**

5 **1. Tyner and the Committee Did Not Timely Register and Report**

6 An individual is deemed to be a "candidate" for purposes of the Act if he or she receives
7 contributions or makes expenditures in excess of \$5,000.²⁸ Once an individual meets the \$5,000
8 threshold, a candidate has 15 days to designate a principal campaign committee by filing a
9 Statement of Candidacy with the Commission.²⁹ The principal campaign committee must then
10 file a Statement of Organization within ten days of its designation, *see* 2 U.S.C. § 433(a), and
11 must file disclosure reports with the Commission in accordance with 2 U.S.C. § 434(a) and (b).

12 Based on the Committee's bank and PayPal account statements, it appears that Tyner
13 achieved candidate status on December 1, 2011, after receiving contributions in excess of \$5,000.
14 Thus, Tyner should have filed his Statement of Candidacy by December 16, 2011, but Tyner filed
15 the statement 33 days late, on January 18, 2012.³⁰ Similarly, the Committee was required to file

²⁶ Resp. (date Nov. 1, 2012).

²⁷ *Id.* Tyner does not indicate with whom he spoke regarding when he should start filing reports with the Commission and what kind of information the Committee's first report should contain. RAD's communication logs for the Committee list RAD's first communication with the Committee as April 6, 2012 with Tyner himself, but do not reflect such a discussion.

²⁸ 2 U.S.C. § 431(2).

²⁹ 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a).

³⁰ We understand that the Committee may have also received contributions through an ActBlue account, and although it is possible that Tyner's Statement of Candidacy should have been filed even earlier, we have no information concerning the dates the Committee received contributions through ActBlue in order to properly make that determination. And also, upon consideration of the Commission's resources, we do not make any recommendations as to a possible violation of 2 U.S.C. § 432 for failure to timely deposit the PayPal contributions into the Committee's account.

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1 a Statement of Organization no later than December 26, 2011, but it did not file the statement
2 until January 30, 2012, and was thus 35 days late. Therefore, we recommend that the
3 Commission find reason to believe that Tyner violated 2 U.S.C. § 432(e)(1) by failing to timely
4 file a Statement of Candidacy and that the Committee violated 2 U.S.C. § 433(a) by failing to
5 timely file a Statement of Organization.

6 2. The Committee Failed to File a Disclosure Report, Report All Receipts and
7 Disbursements, Accurately Report Receipts, Disbursements, and Cash-On-Hand
8 Balances, and Keep Proper Records of Disbursements
9

10 The Act requires candidate committees to file reports of receipts and disbursements at
11 specific times during the calendar year.³¹ Disclosure reports filed by candidate committees must
12 include the amount of cash-on-hand, the total amount of receipts from individuals and political
13 party committees, loans, rebates, refunds, and other offsets to operating expenditures, and all
14 disbursements.³² In addition, for each person who has made a contribution or contributions,
15 which in the aggregate, exceed \$200 within the election cycle, committees must disclose the
16 name, address, occupation, and employer of the contributor.³³ The report must also identify each
17 person to whom an expenditure in an aggregate amount or value in excess of \$200 within the
18 calendar year is made to meet a candidate or committee operating expense, together with the
19 date, amount and purpose of any such operating expenditure.³⁴

20 The Act and Commission regulations also prescribe how committees must maintain
21 accounts and track disbursements. Disbursements may be made (other than petty cash

³¹ See 2 U.S.C. § 434(a).

³² 2 U.S.C. § 434(b).

³³ 2 U.S.C. § 434(b)(3)(A); see also 2 U.S.C. § 431(13).

³⁴ 2 U.S.C. § 434(b)(5)(A).

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1 disbursements) only by check or similar draft drawn on the committee's bank account.³⁵ Further,
2 a political committee may maintain a petty cash fund for disbursements not in excess of \$100 to
3 any person in connection with a single purchase or transaction.³⁶ Committees must also keep a
4 record of such petty cash disbursements.³⁷

5 The Committee failed to file one report with the Commission and disclose all receipts and
6 disbursements from the relevant time period that would have been covered by that disclosure.
7 Because Tyner became a candidate on December 1, 2011, and the Committee was required to file
8 a Statement of Organization by December 26, 2011, the Committee's first required disclosure
9 report was the 2011 Year-End Report, which should have disclosed all of the Committee's
10 receipts and disbursements from the time that Tyner launched his campaign in August 2011
11 through December 31, 2011. The Committee, however, filed the 2012 April Quarterly Report as
12 its first report and it failed to disclose all of its receipts (\$5,388.61) and disbursements (\$5,233)
13 made from August through December 2011.

14 In addition, the Committee misreported its cash-on-hand, receipts, and disbursements in
15 the reports that it did file with the Commission. The Committee's 2012 April Quarterly Report
16 disclosing activity from January 1 through March 31, 2012, reported a cash-on-hand balance of
17 \$5,864.04 and its amended April Quarterly disclosed a cash-on-hand balance of \$6,271.80, even
18 though the Committee's bank statement for that time period shows a balance of 41 cents on
19 March 31, 2012.³⁸ The Committee's 12-Day Pre-Primary Report covering the period from April

³⁵ 2 U.S.C. § 432(h)(1); 11 C.F.R. § 102.10.

³⁶ 2 U.S.C. § 432(h)(2); 11 C.F.R. § 102.11.

³⁷ 2 U.S.C. § 432(h)(2); 11 C.F.R. § 102.11.

³⁸ *Sua Sponte* Submission at 1.

1 through June 6, 2012, disclosed a cash-on-hand balance of \$8,499.78 even though the bank account reflects a balance of \$3,290.97 on June 6.³⁹ According to Fredericks, the Committee's reports also failed to accurately disclose its disbursements by reporting Tyner's estimates for gas and telephone expenses for the time period from January 1 through March 31, 2012, without any receipts to substantiate the expenses. It may have also reported inaccurate receipts as a result of Tyner's failure to provide Fredericks with information concerning cash contributions he may have received at a number of fundraising events.

Because the Committee failed to file a required disclosure report and failed to accurately disclose all receipts, disbursements, and cash-on-hand balances, we recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(a) and (b).⁴⁰

Additionally, based on cash withdrawals evident on the Committee's bank statements, it appears that Tyner used cash for expenses almost exclusively from August 2011 through April 2012, and then less frequently starting in May 2012. The bank statements show that the Committee did not issue any checks from its bank account or make debit card purchases until May 2012, and it does not appear that the Committee kept records of its cash disbursements. Therefore, we also recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. § 432(h) by failing to properly account for its cash disbursements.

³⁹ *Sua Sponte* Submission at 1 and Attach.; Fredericks Submission (Dec. 11, 2012) (including partial bank statement for June 2012).

⁴⁰ It also appears that Tyner failed to properly report loans on a Schedule A in a Termination Report he filed with the Commission on July 19, 2012. The report discloses a loan from a Fred Knapp in the amount of \$1,700 and a loan from the candidate in the amount of \$1,000 on Schedule C forms, but did not list the loans as receipts on Schedule A. However, we are not making any recommendations as to that reporting error.

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1 3. There is No Evidence that Tyner Converted Campaign Funds for Personal Use

2 Fredericks alleges that the candidate's use of cash from the Committee account raises
3 questions as to whether the candidate may have used campaign funds for personal use, in
4 violation of 2 U.S.C. § 439a(b). The Act and implementing regulations prohibit any person from
5 converting to "personal use" contributions and other donations received by a candidate or
6 individual Federal officeholder.⁴¹ "Personal use" is the use of funds in a campaign account of a
7 federal candidate "to fulfill a commitment, obligation or expense of a person that would exist
8 irrespective of the candidate's election campaign or individual's duties as a holder of Federal
9 office."⁴² The Act and Commission regulations set forth some *per se* examples of personal use,
10 including utility payments, noncampaign-related automobile expenses, and health club dues,
11 among others.⁴³ The regulations state that the Commission will determine on a case-by-case
12 basis whether other uses of campaign funds constitute personal use.⁴⁴ The Commission has
13 further explained that "[i]f the candidate can reasonably show that the expenses at issue resulted
14 from campaign or officeholder activities, the Commission will not consider the use to be
15 personal use."⁴⁵

16 The complaint provides no specific instances of alleged personal use, explaining only that
17 the candidate's failure to provide receipts for all of his expenses indicated that he converted the
18 funds. By contrast, Tyner denies the personal use allegation and points to specific campaign

⁴¹ 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g); Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7863 (Feb. 9, 1995) (explanation and justification).

⁴² 2 U.S.C. § 439a(b)(2); 11 C.F.R. § 113.1(g).

⁴³ See 2 U.S.C. § 439a(b)(2)(A)-(I); 11 C.F.R. § 113.1(g).

⁴⁴ 11 C.F.R. § 113.1(g)(1)(ii).

⁴⁵ 60 Fed. Reg. at 7867.

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1 events that he attended throughout the district that required him to travel long distances,
2 justifying his gas expenses. Documents and information provided by Fredericks and Tyner
3 provided to the Commission, including copies of e-mails between Tyner and Fredericks, support
4 Tyner's assertions that he spent cash from the campaign account to purchase minutes for a pay-
5 as-you-go phone, printing and copying costs, and to reimburse campaign volunteers.⁴⁶
6 Therefore, we recommend that the Commission find no reason to believe that Tyner violated
7 2 U.S.C. § 439(a).

8 4. Dismissal of Tyner's Failure to Formally Designate a New Treasurer is
9 Appropriate

10
11 Under the Act and Commission regulations, committees are required to amend their
12 statements of organization within ten days of a change of any of information in the statement,
13 including a change of treasurer.⁴⁷ Based on the circumstances in this matter, however, we
14 recommend that the Commission dismiss Fredericks's allegation that Tyner failed to appoint a
15 new treasurer because it appears that problem has been resolved.⁴⁸ Although the Committee has
16 not formally named a new treasurer by filing an amended Statement of Organization, Tyner
17 informed RAD that he would serve as treasurer and has signed the most recent reports the
18 Committee filed with the Commission. In addition, as discussed *infra*, in light of Tyner's prior
19 attempts to terminate the Committee,

20

⁴⁶ See generally Fredericks Submission (Dec. 11, 2012).

⁴⁷ 2 U.S.C. § 433(c); 11 C.F.R. § 102.2(a)(2).

⁴⁸ See, e.g., Certification (Feb. 4, 2009) and First Gen. Counsel's Rpt. at 12, MUR 5924 (Tan Nguyen for Congress) (dismissing 433(c) allegation because of lack of information and relatively minor nature of violation); but see Certification (June 29, 2004) and First Gen. Counsel's Rpt. at 20-21, MUR 5354 (Schneider for Congress) (finding reason to believe and sending admonishment letter for 433(c) violation where committee failed to amend statement of organization for three months after treasurer resigned).

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5. The Circumstances Do Not Warrant Holding Fredericks Personally Liable for Violations of the Act

Under the Act, a treasurer is required to accurately keep an account of receipts and disbursements.⁴⁹ The treasurer is personally responsible for the timely and complete filing of reports and statements required by the Act, and for the accuracy of any information or statement contained in them.⁵⁰ While these requirements impose a legal obligation on treasurers, in practice, the Commission only pursues treasurers or former treasurers in their personal capacities "when available information (or inferences fairly derived therefrom) indicates that the treasurer had knowledge that his or her conduct violated a duty imposed by law, or where the treasurer recklessly failed to fulfill his or her duties under the act and regulations, or intentionally deprived himself or herself of facts giving rise to the violations."⁵¹

Here, it appears that Fredericks attempted to disclose the campaign's financial activity. Tyner's failure to provide receipts for most of the campaign's expenditures, however, hampered her ability to file accurate disclosure reports. The contemporaneous e-mails that Fredericks provided show that she requested receipts from Tyner and suggested ways by which Tyner could properly track his receipts and disbursements. Despite her efforts, however, the Committee's 2012 April Quarterly Report only disclosed Tyner's estimates for gas and telephone expenses for the time period from January 1 through March 31, 2012, and there were cash-on-hand discrepancies between the Committee's reports and its bank balances throughout all of the

⁴⁹ See 2 U.S.C. § 432(c).

⁵⁰ See 2 U.S.C. § 434.

⁵¹ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3-5 (Jan. 3, 2005); see also MUR 6475 (Andrew McCrosson), MUR 6179 (Christopher Ward), MUR 5610 (Earl Allen Haywood), MUR 5721 (Lockheed Martin), MUR 5971 (Jennifer Adams) (naming former treasurers in their personal capacities in connection with their knowing and willful violations of the Act).

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1 Committee disclosure reports. Although Fredericks filed two disclosure reports on behalf of the
2 Committee, she resigned once she realized that she could not obtain the information necessary to
3 file accurate reports with the Commission. Because Fredericks took steps to improve the
4 Committee's recordkeeping, attempted to properly disclose the campaign's receipts and
5 disbursements on the two reports that she filed, and ultimately resigned as Treasurer in part
6 because of Tyner's management of the Committee's funds, we recommend that the Commission
7 make no findings as to Fredericks in her personal capacity and that it decline to open a MUR.

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IV. RECOMMENDATIONS

- 1.
2. Find reason to believe that Joel C. Tyner violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a).
3. Find reason to believe that Joel for Congress and Joel C. Tyner in his official capacity as treasurer violated 2 U.S.C. §§ 432(h), 433(a) and 434(a) and (b).
4. Dismiss the allegation that Joel for Congress and Joel C. Tyner in his official capacity as treasurer violated 2 U.S.C. § 433(c).
5. Find no reason to believe that Joel C. Tyner violated 2 U.S.C. § 439(a).
6. Decline to Open a MUR as to Misha Fredericks and close the file as to her.
7. Approve the attached Factual and Legal Analysis.
8. Enter into conciliation with Joel C. Tyner, Joel for Congress and Joel C. Tyner in his official capacity as treasurer prior to a finding of probable cause to believe.


9.

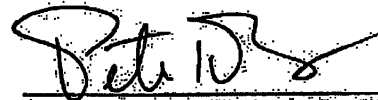
10. Approve the appropriate letters.

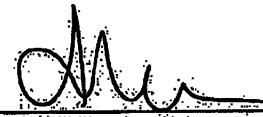
Anthony Herman
General Counsel

3-19-13
Date

BY:


Kathleen Guith
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Peter G. Blumberg
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